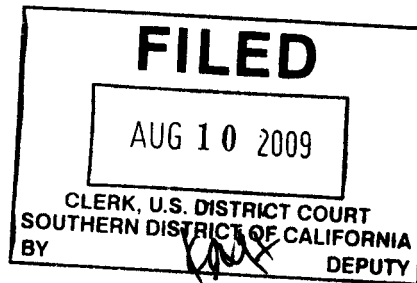


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Los Angeles, CA 90025
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Fax: 866-583-3695
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Attorneys for Plaintiffs
TODD TORRES AND
AMBER TORRES



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TODD TORRES AND
AMBER TORRES

Plaintiff,

vs.

TATE & KIRLIN ASSOCIATES,

Defendant.

Case 09:CV 1735 L RBB

VERIFIED COMPLAINT AND DEMAND
FOR JURY TRIAL

(Unlawful Debt Collection Practices)

VERIFIED COMPLAINT

TODD TORRES AND AMBER TORRES (Plaintiffs), by their attorneys, KROHN & MOSS, LTD., allege the following against TATE & KIRLIN ASSOCIATES, (Defendant):

INTRODUCTION

1. Count I of Plaintiffs' Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. (FDCPA).
2. Count II of the Plaintiffs' Complaint is based on Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. (RFDCPA).

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and *28 U.S.C. 1367* grants this court supplemental jurisdiction over the state claims contained therein.
4. Defendant conducts business in the state of California, and therefore, personal jurisdiction is established.
5. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)*.
6. Declaratory relief is available pursuant to *28 U.S.C. 2201 and 2202*.

PARTIES

7. Plaintiffs are natural persons residing in Escondido, San Diego County, California.
8. Plaintiffs are consumers as that term is defined by *15 U.S.C. 1692a(3)*, and according to Defendant, Plaintiffs allegedly owes a debt as that term is defined by *15 U.S.C. 1692a(5)* and *Cal. Civ. Code § 1788.2(h)*.
9. Defendant is a debt collector as that term is defined by *15 U.S.C. 1692a(6)* and *Cal. Civ. Code § 1788.2(c)*, and sought to collect a consumer debt from Plaintiffs.
10. Defendant is a national company with its headquarters in Philadelphia, Pennsylvania.
11. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

12. Defendant is placing constant and continuous collection calls to Plaintiffs in an attempt to collect upon an alleged debt.
13. Defendant places collection calls from the telephone number 866-923-5194.
14. Defendant places multiple collection calls to Plaintiffs in a single day.

1 15. Defendant placed at least six (4) collection calls to Plaintiff on July 10, 2009. (See
2 Exhibit A).

3 16. Defendant placed at least four (4) collection calls to Plaintiff on July 13, 2009. (See
4 Exhibit A).

5 17. Defendant places collection calls to Plaintiffs and hang up the phone before Plaintiffs or
6 the answering machine can answer the phone.

7 **COUNT I**
8 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

9 18. Defendant violated the FDCPA based on the following:

10 a. Defendant violated §1692(d) of the FDCPA by engaging in conduct the natural
11 consequence of which is to harass, oppress, and abuse Plaintiffs.

12 b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring
13 repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiffs.

14 c. Defendant violated §1692d(6) of the FDCPA by placing telephone calls to
15 Plaintiffs and failing to provide meaningful disclosure by hanging up the line
16 before Plaintiffs can answer the phone.

17 d. Defendant violated §1692e(10) of the FDCPA by engaging in the deceptive
18 practice of placing continuous collection calls to Plaintiff and hanging up the line
19 before Plaintiffs can answer the phone.

20 e. Defendant violated §1692e(11) of the FDCPA by failing to inform Plaintiffs in
21 each subsequent communication that the Defendant is a debt collector by placing
22 telephone calls to Plaintiff and hanging up the line before Plaintiffs can answer.

23 19. As a direct and proximate result of one or more or all of the statutory violations above
24 Plaintiffs have suffered emotional distress (see Exhibit "B").
25

1 WHEREFORE, Plaintiffs, TODD TORRES AND AMBER TORRES, respectfully
2 request judgment be entered against Defendant, TATE & KIRLIN ASSOCIATES, for the
3 following:

- 4 20. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection
5 Practices Act,
6 21. Statutory damages pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,
7 22. Actual damages,
8 23. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
9 *15 U.S.C. 1692k*
10 24. Any other relief that this Honorable Court deems appropriate.

11 **COUNT II**
12 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION**
13 **PRACTICES ACT**

- 14 25. Plaintiffs repeat and reallege all of the allegations in Count I of Plaintiffs' Complaint as
15 the allegations in Count II of Plaintiff's Complaint.
16 26. Defendant violated the RFDCPA based on the following:
17 a. Defendant violated §1788.11(b) of the RFDCPA by placing telephone calls to
18 Plaintiffs and failing to provide meaningful disclosure by hanging up the line
19 before Plaintiffs can answer the phone.
20 b. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiffs telephone
21 to ring repeatedly and continuously so as to annoy Plaintiffs.
22 c. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to
23 Plaintiffs with such frequency that was unreasonable and constituted harassment.
24 d. Defendant violated the §1788.17 of the RFDCPA by continuously failing to
25 comply with the statutory regulations contained within the FDCPA, *15 U.S.C. §*
1692 et seq.

27. As a direct and proximate result of one or more or all of the statutory violations above
Plaintiffs have suffered emotional distress (see Exhibit "B").

WHEREFORE, Plaintiffs, TODD TORRES AND AMBER TORRES, respectfully
request judgment be entered against Defendant, TATE & KIRLIN ASSOCIATES, for the
following:

28. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt
Collection Practices Act,

29. Statutory damages pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal.*
Civ. Code §1788.30(b),

30. Actual damages,

31. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection
Practices Act, *Cal. Civ Code § 1788.30(c)*, and

32. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiffs, TODD TORRES AND AMBER TORRES,
demands a jury trial in this case.

DATED: August 6, 2009

RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD.

By: _____

Nicholas J. Bontrager
Attorney for Plaintiff

VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF CALIFORNIA)

Plaintiffs, TODD TORRES and AMBER TORRES, say as follows:

1. We are the Plaintiffs in this civil proceeding.
2. We have read the above-entitled civil Complaint prepared by our attorneys and we believe that all of the facts contained in it are true, to the best of our knowledge, information and belief formed after reasonable inquiry.
3. We believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. We believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. We have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit we have provided to our attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by our attorneys where appropriate, we have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of our own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), we, TODD TORRES and AMBER TORRES, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated:


TODD TORRES,
Plaintiff

Dated: 07/26/09


AMBER TORRES,
Plaintiff

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EXHIBIT A

Tate & Kirlin call log

866-923-5194

July 13, 2009: 8:59am
July 13, 2009: 12:00pm
July 13, 2009: 2:47pm
July 13, 2009: 4:46pm

July 11, 2009: 8:59am

July 12, 2009: 10:43am

July 10, 2009: 9:01am
July 10, 2009: 9:58am
July 10, 2009: 12:34pm
July 10, 2009: 7:54pm

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EXHIBIT B

I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

- | | | |
|---|--------------------------------------|-------------------------------------|
| 1. Sleeplessness | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 2. Fear of answering the telephone | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 3. Nervousness | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 4. Fear of answering the door | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 5. Embarrassment when speaking with family or friends | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 6. Depressions (sad, anxious, or "empty" moods) | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 7. Chest pains | <input checked="" type="radio"/> YES | <input checked="" type="radio"/> NO |
| 8. Feelings of hopelessness, pessimism | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 9. Feelings of guilt, worthlessness, helplessness | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 10. Appetite and/or weight loss or overeating and weight gain | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 11. Thoughts of death, suicide or suicide attempts | <input checked="" type="radio"/> YES | <input checked="" type="radio"/> NO |
| 12. Restlessness or irritability | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 13. Headache, nausea, chronic pain or fatigue | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 14. Negative impact on my job | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 15. Negative impact on my relationships | <input checked="" type="radio"/> YES | <input type="radio"/> NO |

Other physical or emotional symptoms you believe are associated with abusive debt collection activities: I FEEL STUCK. I FEEL HARRASSED AND
IGNORED.

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 07/24/09

Signed Name

AMBER TORRES

Printed Name

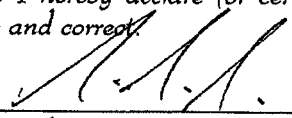
I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

- | | | |
|---|--------------------------------------|-------------------------------------|
| 1. Sleeplessness | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 2. Fear of answering the telephone | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 3. Nervousness | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 4. Fear of answering the door | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
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| 12. Restlessness or irritability | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 13. Headache, nausea, chronic pain or fatigue | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 14. Negative impact on my job | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 15. Negative impact on my relationships | <input checked="" type="radio"/> YES | <input type="radio"/> NO |

Other physical or emotional symptoms you believe are associated with abusive debt collection activities: _____

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 07/26/09


Signed Name

TODD N. TORRES
Printed Name

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

TODD TORRES AND
AMBER TORRES(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

'09 CV 1735 L

RBB

(c) Attorney's (Firm Name, Address, and Telephone Number)

Krohn & Moss, Ltd. Nicholas J. Bontrager (323) 988-2400
10474 Santa Monica Blvd., Suite 401 Los Angeles, CA 90025

DEFENDANTS

TATE & KIRLIN ASSOCIATES

County of Residence of First Listed Defendant Philadelphia (PA)

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

FILED
AUG 10 2009
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY WMT DEPUTY

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692 et seq.Brief description of cause:
Unlawful and abusive debt collection practices

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/06/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

4069

AMOUNT

350.

APPLYING IFP

JUDGE

MAG. JUDGE

8/10/09

CR

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS004069
Cashier ID: sramirez
Transaction Date: 08/10/2009
Payer Name: KROHN MOSS LTD

CIVIL FILING FEE
For: TORRES V. TATE AND KIRLIN
Case/Party: D-CAS-3-09-CV-001735-001
Amount: \$350.00

CHECK
Check/Money Order Num: 17266
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.